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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 508

THELMA LEVY, in her capacity as administratrix of the succession of LOUISE LEVY and as the tutrix of and on behalf of the minor children of LOUISE LEVY, said children being: RONALD BELL, REGINA LEVY, CECILIA LEVY, LINDA LEVY, and AUSTIN LEVY,

Appellant,

—v.—

THE STATE OF LOUISIANA through the CHARITY HOSPITAL OF LOUISIANA at NEW ORLEANS BOARD OF ADMINISTRATORS and W. J. WING, M.D. and A.B.C. INSURANCE COMPANIES,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

JURISDICTIONAL STATEMENT FILED AUGUST 16, 1967
PROBABLE JURISDICTION NOTED NOVEMBER 6, 1967

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1967

No. 508

THELMA LEVY, in her capacity as administratrix of the
succession of LOUISE LEVY and as the tutrix of and on
behalf of the minor children of LOUISE LEVY, said
children being: RONALD BELL, REGINA LEVY, CECILIA
LEVY, LINDA LEVY, and AUSTIN LEVY,

Appellant,

—v.—

THE STATE OF LOUISIANA through the CHARITY HOSPITAL OF
LOUISIANA at NEW ORLEANS BOARD OF ADMINISTRATORS
and W. J. WING, M.D. and A.B.C. INSURANCE COMPANIES,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

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STATE OF LOUISIANA
PARISH OF ORLEANS
CITY OF NEW ORLEANS
CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS

No. 430-566 Division "G" Docket No. 4

Division "G"

Docket No. 4

THELMA LEVY, in her capacity as administratrix of the Succession of Louise Levy, and as the tutrix of and on behalf of the minor children of Louise Levy, said children being: RONALD BELL, REGINA LEVY, CECILA LEVY, LINDA LEVY and AUSTIN LEVY,

vs.

THE STATE OF LOUISIANA through the CHARITY HOSPITAL OF
LOUISIANA AT NEW ORLEANS BOARD OF ADMINISTRATORS
and W. J. WING, M.D. and A. B. C. INSURANCE COM-
PANIES.

Chronological List of Docket Entries

1964

December 16. Petition, Affidavit & Order (1)

16. (3) Copies Petition Citation

16. Library fees

16. Venire

8

16. Stenographer fees

23. Return on Citation 12-21-64

1965

January 4. Motion for extension of time (2)
 5. Return on Citation 12-31-64
 11. Motion State of Louisiana for extension
 of time to plead (3)
 22. Motion of Dr. Willard Jones Wing M.D.
 for an extension of time (4)
 22. Photostats

February 10. Exceptions of State of Louisiana at
 10:25 a.m. (5)

March 9. Exceptions of Board of Administrators
 Charity Hospital at Louisiana at New
 Orleans @ 10:45 a.m. (6)

April 23. Peremptory & Dilatory Exceptions and
 Memorandum of Dr. W. J. Wing M.D.
 and Interstate Fire and Casualty Com-
 pany @ 10:23 a.m. (7)

September 23. Motion to fix Exceptions & Copies (8)
 30. Return on Motion 9-27-65

October 13. Supplemental and Amending Petition
 and Order (9)
 14. Motion to be made attorney of record
 (10)

November 9. Exceptions of Dr. W. J. Wing and Inter-
 state Fire and Casualty Company (11)
 12. Peremptory Exceptions @ 1:25 P.M.
 (12)

1965

November 24. Exceptions of the State of Louisiana
@ 1:20 P.M. (13)

December 1. Motion to fix Exceptions & Copies (14)
6. Return on (1) Motion 12-1-65
7. Return on (2) Motions 12-3-65

—3—

7. Continued to 12-21-65

1966

January 28. Third Supplemental and Amending Peti-
tion and Order (1) Exhibit attached (15)
28. Exceptions maintained
31. Judgment on Exceptions Read, Rendered
and Signed (16)
31. Notice of Judgment (17)
31. Second Supplemental and Amending
Petition (18)

April 21. Petition for Appeal (19)
21. (3) Notices of Appeal (20)

August 10. Testimony and C.

Minutes of Court

**EXTRACTS FROM THE MINUTES OF DIVISION "G",
HONORABLE PAUL P. GAROFALO, Judge.**

Continued Indefinitely

Friday October 15, 1965

The following Rule was Continued Indefinitely.

—
THELMA LEVY, ETC., ET AL.,

—vs.—

THE STATE OF LOUISIANA, ETC., ET AL.

No. 430-566

Continued to 12-21-65

Tuesday December 7, 1965

Continued

December 17, 1965

The following Rule was Continued to January 14, 1966

—
THELMA LEVY, ETC., ET AL.,

—vs.—

THE STATE OF LOUISIANA, ETC., ET AL.

No. 430-566

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

Petition for Damages Due to Malpractice

(Filed December 16, 1964)

*To the Honorable of the Civil District Court for the Parish
of Orleans, State of Louisiana:*

The petition of Thelma Levy, in the capacities represented above and on behalf of the minors Ronald Bell, Regina Levy, Cecilia Levy, Linda Levy and Austin Levy, all of whom are domiciled in the Parish of Orleans, State of Louisiana, with respect represents that:

I.

The State of Louisiana through the Board of Administrators of Charity Hospital of Louisiana at New Orleans owns operates and is responsible for the operation of the Charity Hospital at New Orleans.

II.

On the dates and at the place in question W. J. Wing, M. D. was an employee of and a resident medical doctor at Charity Hospital of Louisiana in New Orleans and was acting within his scope of employment when the events in question took place.

III.

Defendants, designated as A. B. C. Insurance Companies are unknown to the petitioner at this time are the liability insurers for medical malpractice of the Charity

Hospital of Louisiana at New Orleans and its employee medical doctors and/or W. J. Wing, a medical doctor

—6—

who was a resident at Charity Hospital of Louisiana in New Orleans in March of 1964.

IV.

Petitioner, Thelma Levy, is the sister of one Louise Levy and the Administratrix of the Succession of Louise Levy said Succession being on file in the Civil District Court of the Parish of Orleans, State of Louisiana and is the tutrix of the minor children of Louise Levy the said children being:

RONALD BELL, CECILIA LEVY, REGINA LEVY, LINDA LEVY and AUSTIN LEVY.

V.

Defendant, W. J. Wing's, address is not known to your petitioner but in the event that service is not obtained upon him it is hereby requested that a curator ad hoc be appointed to represent the said absent defendant, W. J. Wing, M. D. in these proceedings and an order so stating will be submitted to this honorable court at a later date.

VI.

Thus, Defendants, The State of Louisiana through The Board of Directors of Charity Hospital at New Orleans, W. J. Wing, M. D. and A. B. C. Insurance Companies, are individually, jointly and in solido liable to your petitioners for the full and true sum Sixty Thousand Dollars and No Cents (\$60,000.00), with legal interest from judicial demand and all costs of these proceedings for reasons which follow, to-wit:

VII.

On or about the March 12, 1964 one Louise Levy came to Charity Hospital in New Orleans, Louisiana with the following symptomatology: tiredness, dizziness, weakness, chest pain, and slowness of breath.

VIII.

At this time and place her case was assigned to one W. J. Wing, M. D. who was on the time and at the dates in question a resident of Charity Hospital of Louisiana at New Orleans and who saw the above patient in his scope of authority as a resident physician of the said hospital.

—7—

IX.

At this time and place Dr. W. J. Wing saw Louise Levy in a professional capacity as a resident of the said hospital and purportedly examined her regarding the above complaints but the said medical doctor did then and there fail to make any type of adequate physical examination of the said patient. In particular he failed to take her blood pressure or to make a proper check of her eyes or any other test such as urinalysis which would have revealed her true serious condition in time that the terminal crisis that did occur might have been avoided.

X.

On March 12, W. J. Wing, M.D., a defendant herein, after making the above described superficial test and ordering an inadequate x-ray examination sent the patient home in a critical condition to fill herself with tonic and tranquilizers, namely Sodium Butisol and Alertonic.

XI.

On March 19, 1964, the said Louise Levy was returned to Charity Hospital of Louisiana at New Orleans, a defendant herein, by her family and at this time her symptoms were more severe and she was again referred to W. J. Wing, M.D. who merely looked at the patient in question without making any examination of her condition and told her in substance: "1. She was not taking the medicine given her 2. Made her an appointment with psychiatry on May 14, 1964."

XII.

After these two obviously inadequate examinations Louise Levy had a terminal episode, which proper medication might have prevented, and was brought to the hospital comatose on March 22, 1964.

XIII.

Only then, on March 22nd, when the patient in question was comatose was an adequate examination and subsequent treatment carried out. The correct diagnosis of her condition was hypertension Uremia from which cause the said

—8—

Louise Levy died on March 29, 1964.

XIV.

When Louise Levy was seen on the 12th and 19th of March at Charity Hospital of Louisiana at New Orleans by W. J. Wing, M.D. there was some chance that with proper medication her life may have been at least prolonged. But as a direct and proximate result of the malpractice and wanton negligence of W. J. Wing, M.D., who

was acting at the time within the scope of his capacity as a resident medical doctor for Charity Hospital of Louisiana in New Orleans, Louise Levy was robbed of this "valuable chance".

XV.

The above described failure to make a proper examination was gross negligence on the part of W. J. Wing, M.D. and through his agency gross negligence on the part of Charity Hospital of Louisiana at New Orleans which said negligence directly contributed to and concurrently caused the actionable death of Louise Levy.

XVI.

As a direct result of the above described negligence Louise Levy, her estate, and her minor children suffered the following damages:

Louise Levy, (mental anguish while alive) \$ 5,000

(All children for loss of mother prior to age 21 yrs.)

1. Ronald Bell	3,000
2. Regina Levy	9,000
3. Cecilia Levy	11,000
4. Linda Levy	13,000
5. Austin Levy	14,000
(\$1,000 for each child for loss after 21 yrs.) ..	5,000

(N.B. all claims include the loss of chance for life)

TOTAL **\$60,000**

XVII.

Petitioners herein at this time specifically plead to R.S. 46:759 and the application of the doctrine of res ipsa loquitur and further avers that agents of the hospital have made certain admissions against interest which support the petitioners allegations.

XVIII.

That the administratrix, children and estate of Louise

—9—

Levy are without means and are unable to pay, in advance or as they accrue, the cost of prosecuting this cause of action, or to post bond therefor, and being residents of the State of Louisiana request permission to file this action in forma pauperis.

XIX.

Petitioners, further plead that while Louise Levy's condition was chronic she had no knowledge of it and did all in her power to seek medical aid after she was twice turned away from Charity Hospital of Louisiana in New Orleans, and more specifically they plead a lack of any negligence on the part of the petitioners herein or Louise Levy.

XX.

Amicable demand has been made to no avail, petitioner also request the trial of these matters by jury.

WHEREFORE, petitioner, Thelma Levy, in her capacity of administratrix of the estate of Louise Levy and tutrix of her minor children, and on behalf of; Ronald Bell, Regina Levy, Cecila Levy, Linda Levy and Austin Levy, prays

for judgment against the defendants, the State of Louisiana, W. J. Wing, M.D., and ABC Insurance Companies, after due proceedings had, for the full and true sum of sixty thousand dollars and no cents (\$60,000.00) with legal interest from judicial demand, for all cost of these proceedings, and for all general and equitable relief.

LAWRENCE J. SMITH
Attorney for Petitioner
404 Richards Building
New Orleans, Louisiana
525-0695

ORDER

Considering the foregoing petition and attached affidavits, let this petition and matter be filed in forma pauperis and the petitioner is hereby dispensed from the necessity of paying for the cost of prosecuting this cause of action and let the matters herein be set for trial by jury.

December 16, 1964

CLARENCE DOWLING

—10—

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared, Thelma Levy, who after being duly sworn deposed and said:

That she is the petitioner herein, she is a citizen of the State of Louisiana and is presently residing and domiciled therein; that she, in her capacity as tutrix of the minor children of or as administratrix of the estate of Louise

Levy, because of the poverty or lack of means of herself, the minor children of Louise Levy, and the estate of Louise Levy, she is unable to make prior payment of the cost of these proceedings, or to pay them as they accrue, or to post bond therefor.

THELMA LEVY
Petitioner

Sworn to and subscribed before me this 15 day of December 1964.

(Signature illegible)
Notary Public

BEFORE ME, the undersigned authority, personally came and appeared Mary Levy, who after being duly sworn deposed and said:

That she knows Thelma Levy, the children of Louise Levy, and knows the financial condition of the estate of Louise Levy, all plaintiffs in the foregoing petition, and she believes and therefore avers that the above named persons and entities are unable to pay the cost of these proceedings either in advance or as they accrue, or to give bond therefor.

MARY LEVY
Affiant

Sworn to and subscribed before me this 15 day of December 1964.

(Signature illegible)
Notary Public

Citation**CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA**

To: W. J. Wing, M.D.,
Charity Hospital,
New Orleans, Louisiana

You ARE HEREBY CITED to either comply with the demand contained in the petition of which certified copy accompanies this citation, or, make an appearance, either by filing a pleading or otherwise, in The Civil District Court for the Parish of Orleans, State of Louisiana, the address of which is The Civil Courts Building, 421 Loyola Avenue, New Orleans, Louisiana, within fifteen days after the service hereof under penalty of default.

Witness the Honorables Rene A. Viosca, Alexander E. Rainold, Oliver P. Carriere, Clarence Dowling, Fred J. Cassibry, Howard J. Taylor, David Gertler and Paul P. Garofalo, Judges of the said Court.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the Seal of The Civil District Court for the Parish

of Orleans, State of Louisiana, this 17th day of Dec.
in the year of our Lord 1964.

THOMAS S. BUCKLEY
*Clerk of The Civil District Court
for the Parish of Orleans,
State of Louisiana*

by /s/ (Signature illegible)
Deputy Clerk.

Clerk's Office, Room 402, Civil Courts Building
421 Loyola Avenue, New Orleans, Louisiana

CERTIFICATE OF SERVICE (omitted in printing)

-11-

Motion and Order of Ingard O. Johannesen

(Filed January 4, 1965)

**CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA**

On motion of Ingard O. Johannesen, Attorney for the Charity Hospital of Louisiana at New Orleans Board of Administrators, and on suggesting to this Honorable Court that this matter has just been turned over to mover, and mover desires time in which to investigate the same, it is therefore respectfully requested that mover be granted an extension of thirty (30) days time in which to properly file his pleadings or answer in this matter.

IT IS ORDERED that mover herein be granted an extension of thirty (30) days in which to file pleadings or answer this matter.

New Orleans, Louisiana, December 4th, 1965.

CLARENCE DOWLING

Judge

Respectfully submitted,

INGARD O. JOHANNESSEN
Attorney for Charity Hospital
of Louisiana at New Orleans
Board of Administrators

Motion and Order of Dorothy D. Wolbrette

(Filed January 11, 1965)

**CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA**

On motion of Dorothy D. Wolbrette, Assistant Attorney General, representing the State of Louisiana, and on suggesting to this Honorable Court that this matter has just been turned over to mover, and mover desires time in which to investigate the same, it is therefore respectfully requested that mover be granted an extension of thirty (30) days time in which to properly file her pleadings or answer in this matter.

It Is ORDERED that mover herein be granted an extension of thirty (30) days in which to file pleadings or answer this matter.

New Orleans, Louisiana, January 11, 1965.

A. E. RAINOLD
Judge

Respectfully submitted,

DOROTHY D. WOLBRETTE
Assistant Attorney General,
State of Louisiana

**Motion for Extension of Time Within Which to
File Responsive Pleadings**

(Filed January 22, 1965)

**CIVIL DISTRICT COURT IN AND FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA**

Now into Court, through undersigned counsel, comes Dr. Willard Jones Wing, M.D., defendant in the above entitled and captioned case, who respectfully moves the Court for an extension of time within which to file responsive pleadings.

Mover represents that the issues involved in this litigation are complex and, as yet, unexplored by mover and his Attorneys, and that additional time is required within which to safely plead to the petition filed herein. Mover desires an extension of thirty (30) days from the date of the signing of this Order within which to file responsive pleadings.

PORTEOUS & JOHNSON
WILLIAM A. PORTEOUS, III
925 Hibernia Bank Building
New Orleans, Louisiana, 70112
Telephone 523-2683
Attorneys for Mover

ORDER

IT IS HEREBY ORDERED that defendant, Willard Jones Wing, M.D. be and he is hereby granted thirty (30) days from the date of this Order, or until February , 1965, within which to file responsive pleadings herein.

THIS DONE and SIGNED this 22 day of January, 1965, at New Orleans, Louisiana.

PAUL P. GAROFALO

Judge

—14—

CERTIFICATE OF SERVICE (omitted in printing)

Exceptions

(Filed February 10, 1965)

**CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA**

Now into court, through undersigned counsel, comes the defendant, State of Louisiana, appearing herein solely for the purpose of this exception, and excepts to the plaintiff's petition on the following grounds.

1. The action herein is a tort suit, from which the State of Louisiana is immune, there being no legislative authority for filing the action herein against the State of Louisiana.
2. The plaintiff lacks procedural capacity to sue inasmuch as she is not the duly appointed administratrix of the succession of Louise Levy or the duly appointed tutrix of the minor children named in her petition.
3. The State of Louisiana was not properly served, service having been made on the Secretary of State, as will appear from the record herein.
4. Suits against the State of Louisiana may not be tried by Jury.

WHEREFORE, exceptor prays that this exception be maintained and that, accordingly, there be judgment herein in favor of defendant and against plaintiff, rejecting the plaintiff's demand at his cost.

JACK P. F. GREMILLION
Attorney General
State of Louisiana

JOHN E. JACKSON, JR.
Asst. Attorney General

DOROTHY D. WOLBRETTE
Asst. Attorney General

CERTIFICATE OF SERVICE (omitted in printing)

Exceptions**(Filed March 9, 1965)****CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA**

Now into Court, through undersigned counsel, comes the defendant, the Board of Administrators, Charity Hospital of Louisiana at New Orleans, appearing herein solely for the purpose of this exception, and excepts to the plaintiff's petition on the following grounds:

1.

The action herein is a tort suit, from which the State of Louisiana and agencies thereof are immune, there being no legislative authority for filing the action herein against the State of Louisiana or its agency the Charity Hospital of Louisiana at New Orleans through its Board of Administrators.

2.

The plaintiff lacks procedural capacity to sue inasmuch as she is not the duly appointed administratrix of the succession of Louise Levy or the duly appointed tutrix of the minor children named in her petition.

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3.

The plaintiff lacks procedural capacity to sue inasmuch as there has been no mention of the death of the natural tutor, the father of the said children.

4.

The Board of Administrators of Charity Hospital of Louisiana at New Orleans were not properly sued, nor served, since the suit is only filed against the Charity Hospital at New Orleans.

5.

Suits against the State of Louisiana or agencies of the State of Louisiana may not be tried by Jury.

6.

Plaintiff does not allege a cause of action against the Board of Administrators of Charity Hospital of Louisiana at New Orleans.

7.

The plaintiff does not Pray for judgment against the Board of Administrators of Charity Hospital of Louisiana at New Orleans.

WHEREFORE, exceptor prays that this exception be maintained and that, accordingly, there be judgment herein in favor of defendant and against plaintiff, rejecting the plaintiff's demand at her cost.

INGARD O. JOHANNESSEN
Attorney for Defendant,
Board of Administrators of
Charity Hospital of Louisiana
at New Orleans

Peremptory and Dilatory Exceptions

(Filed April 23, 1965)

**CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA**

Now into Court, through undersigned counsel, comes Dr. W. J. Wing, M.D., and Interstate Fire and Casualty Company, improperly designated A. B. C. Insurance Companies in the petition, who with respect except to the petition of the plaintiff and move that said petition be dismissed on the following dilatory and peremptory grounds:

1.

The petition discloses no capacity on the part of petitioner to institute the captioned action.

- a) Petitioner has not qualified as the Administratrix of the Succession of Louise Levy.
- b) Petitioner has not qualified as the Tutrix of the unemancipated minors named in the petition and has not negatived the existence of the natural tutor of the said minors.

2.

Petitioner, as Administratrix of the Succession of Louise Levy, has no cause or right of action for the wrongful death of Louise Levy, because the law does not confer upon the Administratrix of a Succession a right or cause of action for wrongful death.

3.

Petitioner, as Tutrix of the alleged minors, has no right or cause of action for the wrongful death of Louise Levy, because petitioner has not alleged the legitimacy of said minors, and, further, said minors are not in fact legitimate, and to such illegitimate and their tutors, the law allows no right or cause of action for wrongful death.

WHEREFORE, Exceptors pray that these Exceptions be sustained after due proceedings had and that the petition herein be dismissed to petitioner's prejudice and at her costs, and for all general and equitable relief.

WILLIAM A. PORTEOUS, III
PORTEOUS & JOHNSON
925 Hibernia Bank Building
New Orleans, Louisiana 70112
Telephone—523-2683;

*Attorneys for Dr. W. J. Wing, M.D.
and Interstate Fire and Casualty
Company.*

CERTIFICATE OF SERVICE (omitted in printing)

Folios 22 to 35 (omitted in printing)

-35B-

Order Fixing Date for Trial

(Filed September 23, 1965)

STATE OF LOUISIANA

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

On Motion of Mr. William A. Porteous, III, Attorney for Defendants; it is ordered that the Exceptions in this case be fixed for trial on Friday the 15th day of Oct. 1965.

PAUL P. GAROFALO
Judge

September 23rd, 1965.

[Stamp—A True Copy (signature illegible), Deputy Clerk, Civil District Court, Parish of Orleans, State of La.]

Supplemental and Amending Petition

(Filed October 13, 1965)

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS**STATE OF LOUISIANA**

Now into court comes Thelma Levy, petitioner, in the above numbered and entitled cause, and respectfully represents to this honorable court that she desires to supplement and amend her original petition filed herein, in the following respects:

1.

By adding the following paragraphs:

XXI

Petitioner further alleges that if this honorable court finds that Article 2315 of Louisiana Civil Code does not give unto the children of Louise Levy a right or cause of action for her wrongful death because it is limited only to legitimate children, then petitioner alleges that as to decedent's illegitimate children, the interpretation of said Article 2315 of the Civil Code of the State of Louisiana

—37—

is unconstitutional because it is in violation of the Constitution of the State of Louisiana and of the Fourteenth Amendment to the United States Constitution as it abridges their privileges and immunities as citizens of The United States, it deprives them of life, liberty or property without the due process of law, and it denies to them the equal protection of the laws.

XXII

Mary Levy, the mother of decedent, who was her legitimate child, is of the full age of majority and is a resident of the Parish of Orleans, State of Louisiana, and desires to be added as a party plaintiff in the above entitled and numbered proceedings.

XXIII

The same actions which caused damage to the children of her daughter caused damage to her.

XXIV

Petitioner, Mary Levy, estimates her damages at the sum of \$50,000.00.

XXV

The allegation of damages in paragraph XVI includes not only damages for wrongful death but damages suffered directly by the said children because of loss of support and loss of love and affection.

XXVI

Petitioner desires to name an additional defendant herein, Interstate Fire and Casualty Company, the insurer of W. D. Wing, Jr., and to substitute said company in lieu of the A. B. C. Insurance Companies.

2.

By amending the prayer of the original petition to read as follows:

WHEREFORE, petitioner, Thelma Levy, in her capacity of administratrix of the estate of Louise Levy and tutrix of her minor children, and on behalf of Ronald Bell, Regina Levy, Cecila Levy, Linda Levy and Austin Levy, prays for judgment against the defendants, the Charity Hospital of Louisiana at New Orleans, W. J. Wing, M.D., and Interstate Fire and Casualty Company, jointly and in solido after due proceedings had, for the full and true sum of sixty thousand dollars and no cents (\$60,000.00) with legal interest from judicial demand, for all costs of these proceedings and for all general and equitable relief; and petitioner Mary Levy, further prays for judgment against the defendants, Charity Hospital of Louisiana at New Orleans, W. J. Wing, M.D., and Interstate Fire and Casualty Company, jointly and in solido after due proceedings had, for the full and true sum of fifty thousand dollars (\$50,000.00) with legal interest thereon from judicial demand for all costs of these proceedings, and for all general and equitable relief.

WHEREFORE, petitioners, reiterating the prayer in her original petition, as amended, prays that the original petition be amended and supplemented in the above particulars and that after due proceedings had, there be judgment herein in favor of the petitioner, and against the defendants, all as prayed for herein, and for all general and equitable relief.

LAWRENCE J. SMITH

Attorney for Petitioner

1407 Pere Marquette Building

New Orleans, Louisiana

524-6165

ORDER

Let the foregoing supplemental and amending petition
be filed as prayed for.

New Orleans, Louisiana, October 13, 1965.

PAUL P. GAROFALO
Judge

CERTIFICATE OF SERVICE (omitted in printing)

—39—

Motion to Be Made Attorney of Record

(Filed October 14, 1965).

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

Now into court comes Thelma Levy, petitioner herein, and informs this Honorable Court that additional counsel has been associated for the petitioners in this action and she desires to have the said new counsel Adolph J. Levy also be made attorney of record in this matter.

LAWRENCE J. SMITH

1407 Pere Marquette Building

New Orleans, Louisiana

524-6165

ADOLPH J. LEVY

1407 Pere Marquette Building

New Orleans, Louisiana

524-6165

[Stamp—Entered Minutes G]

O R D E R

Considering the foregoing petition, Let and It Is Hereby So Ordered, That Adolph J. Levy, Esq. be made additional attorney of record for petitioners in the above numbered and entitled cause of action.

New Orleans, Louisiana, October 13, 1965.

PAUL P. GAROFALO

Judge

CERTIFICATE OF SERVICE (omitted in printing)

Peremptory Exceptions

(Filed November 9, 1965)

CIVIL DISTRICT COURT IN AND FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

Now into Court, through undersigned counsel, come Dr. W. J. Wing, M.D., and Interstate Fire and Casualty Company, for the purpose of excepting to the Supplemental and Amending Petition filed herein. Exceptors with respect represent:

1.

By Supplemental and Amending Petition, petitioners have sought to join Mary Levy as a party plaintiff in the above entitled and captioned cause.

2.

Defendants have previously filed Peremptory and Dilatory Exceptions in connection with the captioned matter. If the peremptory character of these original Exceptions be sustained, then the original petitioners herein have failed to assert a right or cause of action within the one year provided by Article 2315 of the Civil Code of the State of Louisiana.

3.

By Supplemental and Amending Petition, petitioners now claim that Mary Levy is a party vested with a cause of action herein under Article 2315.

4.

Exceptors aver that the attempt to assert a cause of action on behalf of Mary Levy comes too late, as such cause of action has prescribed by the limitations period of one year, as provided for in Article 2315 of the Civil Code of the State of Louisiana. Thus, the assertion of a cause of action on behalf of Mary Levy comes too late and should be dismissed.

WHEREFORE, Exceptors pray that the Supplemental and Amending Petition, insofar as same asserts a cause of action on behalf of Mary Levy, be dismissed peremptorily, and for all general and equitable relief.

WILLIAM A. PORTEOUS, III
PORTEOUS & JOHNSON
925 Hibernia Bank Building
New Orleans, Louisiana 70112
Telephone—523-2683;

*Attorneys for Dr. W. J. Wing, M.D.
and Interstate Fire and Casualty
Company.*

CERTIFICATE OF SERVICE (omitted in printing)

Peremptory Exceptions

(Filed November 12, 1965)

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS**STATE OF LOUISIANA**

Now into Court, through undersigned counsel, comes the Board of Administrators of Charity Hospital of Louisiana at New Orleans, for the purpose of excepting to the supplemental and amended petition filed herein. Exceptor with respect represents:

1.

By supplemental and amended petition, petitioners have sought to join Mary Levy as a party plaintiff in the above entitled and captioned cause.

2.

Defendant has previously filed peremptory and dilatory exceptions in connection with the captioned matter. If the peremptory character of these original exceptions be sustained, then the original petitioners herein have failed to assert a right or cause of action within the one year pro-

vided by Article 2315 of the Civil Code of the State of Louisiana.

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3.

By supplemental and amended petition, petitioners now claim that Mary Levy is a party vested with a cause of action herein under Article 2315.

4.

Exceptor avers that the attempt to assert a cause of action on behalf of Mary Levy comes too late, as such cause of action has prescribed by the limitations period of one year, as provided for in Article 2315 of the Civil Code of the State of Louisiana. Thus, the assertion of a cause of action on behalf of Mary Levy comes too late and should be dismissed.

WHEREFORE, exceptor prays that the supplemental and amended petition, insofar as it asserts a cause of action on behalf of Mary Levy, be dismissed peremptorily, and for all general and equitable relief.

INGARD O. JOHANNESEN

*Attorney for the Board of Administrators
of Charity Hospital of Louisiana at New
Orleans*

547 National Bank of Commerce Bldg.
New Orleans, Louisiana 70112

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CERTIFICATE OF SERVICE (omitted in printing)

Exceptions

(Filed November 12, 1965)

**CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA**

Now into Court, through undersigned counsel, comes the defendant, State of Louisiana, appearing herein solely for the purpose of these exceptions, and with full reservation of all of its rights under the exceptions originally filed herein, excepts to the plaintiff's original and amended petition on the following grounds:

1. The State of Louisiana has never been cited herein or served with either the original or the supplemental and amending petition filed herein, the Attorney General never having been cited or served as required in R. S. 13:5106 and Code of Civil Procedure, Articles 1314 and 1880.
2. The original and the supplemental and amending petition filed herein fail to state any cause or right of action for wrongful death under Article 2315 of the Revised Civil Code because:
 - (a) Thelma Levy in the capacity of administratrix, of Louise Levy has no cause or right of action for wrongful death under said Article 2315.
 - (b) Thelma Levy in the capacity of tutrix of the minors named in the petition has no cause or right of action for wrongful death under said Article 2315 because there is no allegation that

said minors are the legitimate offspring of Louise Levy, as required by Article 2315; and in the event that said minors are not the legitimate offspring of Louise Levy, no right or cause of action exists in their favor under Article 2315. *Board of Commissioners v. City of New Orleans*, 223 La. 199, 65 So. 2d 313; *Jackson v. Lindlom*, 84 So. 2d 101.

3. The supplemental and amending petition fails to state any cause or right of action against the State of Louisiana and has in effect dismissed the State of Louisiana from this suit as a party defendant because the plaintiff does not pray for a judgment against the State of Louisiana.
4. Exceptor pleads the peremption and/or prescription of one year as provided by Article 2315 of the Revised Civil Code by reason of Mary Levy's failure to institute a claim within one year of Louise Levy's death. *Romero v. Sims*, 68 So. 2d 154; *Maher v. Schlosser*, 144 So. 2d 706; Note, 24 Tulane Law Review 373.

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Wherefore, exceptor prays that these exceptions be maintained and that there be judgment herein dismissing the suit of all plaintiffs at their cost.

JACK P. F. GREMILLION
Attorney General

JOHN E. JACKSON, JR.
Assistant Attorney General

(MRS.) DOROTHY D. WOLBRETTE
Assistant Attorney General

CERTIFICATE OF SERVICE (omitted in printing)

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Order Fixing Date for Trial

(Filed December 1, 1965)

STATE OF LOUISIANA

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

On Motion of William A. Porteous, III Attorney for
W. J. Wing, M. D., & Interstate Fire & Casualty Co.; it is
ordered that the Exceptions in this case be fixed for trial on
Friday the 17 day of December 1965.

Dec. 1st, 1965

PAUL P. GAROFOLO
Judge

[Stamp—A True Copy (initials illegible), Deputy Clerk,
Civil District Court, Parish of Orleans, State of La.]

Third Supplemental and Amending Petition

(Filed January 28, 1966)

[Stamp—In Forma Pauperis]

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

No. 430-566

Division "G"

Docket 4

THELMA LEVY, in her capacity as administratrix of the Succession of Louise Levy, and as the tutrix of and on behalf of the minor children of Louise Levy, said children being: RONALD BELL, REGINA LEVY, CECILIA LEVY, LINDA LEVY, and AUSTIN LEVY,

vs.

THE STATE OF LOUISIANA, et al.

Filed: Jan. 28, 1966.

A. TALLEY
Deputy Clerk

Now into court comes Thelma Levy, petitioner in the above numbered and entitled cause, and respectfully represents that she desires to supplement and amend her original and supplemental and amending petition in the following respect:

By adding additional paragraphs following paragraphs XXVI to be numbered XXVII through XL:

XXVII.

Decedent was the Negro mother of Ronald Bell, Regina Levy, Cecilia Levy, Linda Levy, and Austin Levy, who through their representative are bringing this action.

XXVIII.

All five children were born out of wedlock.

XXIX.

Decedent certified on each of their birth certificates that she was their mother.

XXX.

Decedent treated all five children in the same manner as any good mother would treat her own legitimate children.

XXXI.

Decedent either took her children or had them taken to Catholic Mass every Sunday.

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XXXII.

She had each of them enrolled in Catholic parochial schools and was paying tuition for them even though she could have sent them to public schools without expense to her.

XXXIII.

She stayed home every night in order to care for her children.

XXXIV.

She loved her children dearly and they loved her.

XXXV.

She worked as a domestic servant in order to provide income sufficient to clothe, feed and educate the children.

XXXVI.

She did everything which a mother of legitimate children would do for her own children, and, indeed, decedent even did more for her children than many legitimate mothers would do for their's.

XXXVII.

Decedent's mother would have been willing to relinquish in favor of her grandchildren at any time any rights of succession or of survivorship or any other rights which she had or might have had superior to them.

XXXVIII.

Had decedent's mother been asked, she would have consented to decedent's legitimization of decedent's children, even knowing that this would have caused her to lose all rights of succession and all rights under Louisiana Civil Code Article 2315 in case of the death of her daughter.

XXXIX.

The income and care which decedent was providing for her children now must be and can only be provided by the sister of the deceased who is under no legal obligation to do anything for them.

XL.

Decedent's legitimate mother is over 80 years old and can neither provide nor care for her grandchildren.

WHEREFORE, petitioner, reiterating the prayer of her original and supplemental and amending petitions as though set forth at length herein, prays that her original and supplemental and amending petitions be supplemented and amended in the above particulars and that, after due proceedings had, there be judgment herein in favor of the petitioner and against the defendants, all as prayed for herein, and for all general and equitable relief.

LAWRENCE J. SMITH
Attorney for Petitioner
1407 Pere Marquette Building
New Orleans, Louisiana

O R D E R

Let the foregoing supplemental and amending petition be filed as prayed for.

New Orleans, La. this 28th day of January, 1966.

PAUL P. GAROFALO
Judge

CERTIFICATE OF SERVICE (omitted in printing)

Folios 53 to 57 (omitted in printing)

Letter from Respondents' Attorneys to Judge Garofalo

(Letterhead of Porteous & Johnson,
New Orleans, Louisiana)

December 10, 1965

Honorable Paul Garofalo
Judge, Division "G"
Civil District Court for the
Parish of Orleans
Loyola Avenue
New Orleans, Louisiana

RE: Thelma Levy, et als vs.
Charity Hospital of Louisiana, et als
No. 430-566 CDC
OUR FILE: 3547-65-6

Dear Judge Garofalo:

We have been contacted by counsel for Thelma Levy, et als in connection with Number 430-566 on your docket in which certain Exceptions are set for December 17. Mr. Smith advises us that it will be impossible for him to try these Exceptions at that time, and, in view of his request, we ask that the Exceptions be continued until January 21, 1966, which date is acceptable to both of us.

By carbon copy of this letter, we are advising Mr. Ingard Johannessen of the date of the re-scheduling of these Exceptions, as well as Mrs. Dorothy Wolbrette. Mrs. Wolbrette

represents the Attorney General in connection with the attack on the constitutionality of the law involved herein.

We greatly appreciate your kindness and courtesy in continuing this matter.

With all best wishes and assurances of our friendship, we remain

Cordially and sincerely yours,

PORTEOUS & JOHNSON

/s/ WILLIAM A. PORTEOUS, III
WILLIAM A. PORTEOUS, III

WAP,III:sf

cc—Mr. Lawrence J. Smith
Mr. Ingard O. Johannesen
Mrs. Dorothy D. Wolbrette

Second Supplemental and Amending Petition

(Filed January 31, 1966)

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS**STATE OF LOUISIANA**

Now into court comes Thelma Levy, petitioner in the above numbered and entitled cause, and respectfully represents that she desires to supplement and amend her original and supplemental and amending petition in the following respect:

1. By adding an additional paragraph following paragraph XXI to be numbered paragraph XXI(A) to read as follows:

XXI(A).

In addition, a finding of no right or cause of action based on illegitimacy would, as to all parties concerned, be in violation of the Louisiana and United States Constitutional provisions that "No State shall . . . pass any bill of attainder," or provisions relating thereto.

WHEREFORE, petitioner, reiterating the prayer of her original petition as though set forth at length herein, prays that her original and supplemental and amending petitions be supplemented and amended in the above particulars and that, after due proceedings had, there be judgment herein in favor of the petitioner and against the defendants, all as prayed for herein, and for all general and equitable relief.

LAWRENCE J. SMITH*Attorney for Petitioner*

1407 Pere Marquette Building

New Orleans, La.

O R D E R

Let the foregoing supplemental and amending petition
be filed as prayed for.

New Orleans, La. this 21st day of January, 1966.

PAUL P. GAROFALO

Judge

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CERTIFICATE OF SERVICE (omitted in printing)

Folios 60 to 64 (omitted in printing)

Notice of Judgment

(Filed January 31, 1966)

STATE OF LOUISIANA

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

To:—

Lawrence L. Smith, Attorney for Plaintiff

A. J. Levy, Attorney for Plaintiffs

Mrs. Dorothy Wolbrette, Asst. Attorney General

Ingard Johannesen, Attorney for Charity Hospital

William A. Porteous, III, Attorney for Dr. William J. Wing et al.

Attorneys for Parties.

Dear Sirs:

In accordance with Article 1913 C. C. P., you are hereby notified that the Court has on January 31st, 1966, judgment rendered and signed in the above cause.

A note is being made on the docket of the mailing of this notice to the Counsel of record for each party.

Mailed January 31, 1966.

Yours very truly,

(Signature illegible)

*Deputy Clerk, Civil District Court
Minute Clerk Division "G"*[Stamp—No. —, Filed Jan. 31, 1966 (signature illegible),
Deputy Clerk, Civil District Court]

Judgment**CIVIL DISTRICT COURT IN AND FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA**

THIS CAUSE CAME ON for hearing on January 21, 1966
on the various exceptions filed by the defendants herein.

Present:

Mr. Lawrence J. Smith
Attorney for Plaintiffs

Mr. A. J. Levy
Attorney for Plaintiffs

Mrs. Dorothy Wolbrette
Assistant Attorney General
Attorney for the State of Louisiana and
representing the Attorney General

Mr. Ingard O. Johannessen
Attorney for the Charity Hospital
of Louisiana

Mr. William A. Porteous, III
Attorney for Dr. Willard J. Wing and
Interstate Fire and Casualty Co.

THIS CAUSE CAME ON for additional hearing on January 28, 1966.

Present:

Mr. Lawrence J. Smith
Attorney for Plaintiffs

Mr. William A. Porteous, III

*Attorney for Dr. Willard J. Wing and
Interstate Fire and Casualty Co.*

CONSIDERING the original petition and the three supplemental petitions filed herein, the various exceptions filed by the parties defendant and the legal memorandum submitted by counsel, the legal arguments advanced in open Court and the stipulations of counsel and for reasons orally assigned;

IT IS ORDERED, ADJUDGED AND DECREED (1) that the State of Louisiana is dismissed from this action, (2) that the exceptions brought on behalf of Charity Hospital of Louisiana are continued indefinitely, (3) that the exceptions brought on behalf of Dr. Willard J. Wing and Interstate Fire and Casualty Company are sustained and the action of all plaintiffs as against Dr. Willard J. Wing and Interstate Fire and Casualty Company is dismissed.

JUDGMENT READ, RENDERED AND SIGNED in Open Court this 31st day of January 1966.

New Orleans, Louisiana.

PAUL P. GAROFALO
Judge

Petition for Appeal and Notices

(Filed April 21, 1966)

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

The petition of Thelma Levy, in her capacity as administratrix of the Succession of Louise Levy, and as the tutrix of and on behalf of the minor children of Louise Levy, said children being: Ronald Bell, Regina Levy, Cecilia Levy, Linda Levy, and Austin Levy, plaintiff in the above entitled and numbered cause, respectfully represents that:

I.

Petitioner desires to appeal devolutively from the final judgment rendered in the above case on the 31st day of January, 1966.

WHEREFORE, petitioner prays that she be granted a devolutive appeal in the above entitled and numbered cause returnable unto the Court of Appeal, Fourth Circuit, State of Louisiana within the delays fixed by law without the necessity of her furnishing security.

LEVY, SMITH & FORD

BY: LAWRENCE J. SMITH

1407 Pere Marquette Bldg.

New Orleans, Louisiana

524-6165

-O R D E R-

Considering the foregoing petition, let Thelma Levy be and she is hereby granted a devolutive appeal from the judgment rendered in the above entitled and numbered cause, returnable in the Court of Appeal, Fourth Circuit, State of Louisiana, on the 13th day of June, 1966 without the necessity of her furnishing security.

New Orleans, Louisiana this 21st day of April, 1966.

PAUL P. GAROFALO
Judge

Please serve:

Charity Hospital of Louisiana through

Mr. Ingard O. Johannesen

National Bank of Commerce Building

New Orleans, Louisiana

State of Louisiana through

Mrs. Dorothy Wolbrette

Assistant Attorney General

State of Louisiana

State Capitol

Baton Rouge, Louisiana

Dr. Willard J. Wing and Interstate Fire

and Casualty Company through

William A. Porteous, III

Porteous & Johnson

925 Hibernia Bank Building

New Orleans, Louisiana

Stipulation

(Filed August 10, 1966)

**CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA**

Stipulation as taken on Friday, January 21, 1966, before
the Honorable Paul P. Garofalo, Judge presiding.

APPEARANCES:**LEVY, SMITH & FORD**(By: Mr. Charles A. Levy, Jr.
and Mr. Lawrence J. Smith)*Attorneys for Plaintiffs***JACK P. F. GREMILLION***Attorney General*

(By: Mrs. Dorothy D. Wolbrette)

*Attorneys for the State of Louisiana***PORTEOUS & JOHNSON**

(By: Mr. Wm. A. Porteous, III)

*Attorneys for Dr. Wing and His Insurer***JOHANNESSEN & ROBERTS**

(By: Mr. Ingard O. Johannessen)

Attorneys for Charity Hospital of New Orleans

Mr. Levy: First, I think we ought to get rid of the State
as a party, and it is further stipulated, I understand, with
consent of counsel, that they have accepted service—

Mrs. Wolbrette: Not the State, the Attorney General accepts service. You see, we should be here because the constitutionality, Article 2315 or its interpretation, has been attacked, and under the Code of Civil Procedure, the Attorney General—all it says is that the Attorney General must be served with a copy of all pleadings in such cases; and he is entitled, if he so wishes, to be heard, but we are not a party to the suit. We are merely observers. I simply represent the Attorney General's office.

The Court: The State of Louisiana is out of the picture completely, but the Attorney General is maintaining its interest conformable to the law which gives them the privilege of being present in all matters which attacks the constitutionality of the State of Louisiana.

Mrs. Wolbrette: That is right. We are not a party to the suit.

Mr. Porteous: She holds my hand, Judge.

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Mr. Levy: Is that in the record?

This, of course, has no effect upon Charity Hospital, this dismissal.

Mr. Johannesen: I think we ought to take up the question about the jury. Neither a State or State agency can be tried by Jury—

Mr. Smith: I think that issue can stand in abeyance until we find out if we are going to have a trial.

(Off the record.)

Mr. Levy: My understanding, as Mr. Porteous just said—mine was as was Mr. Smith's—only the exceptions of Dr. Wing and his insurer are to be brought today.

Mr. Porteous: In setting the rule, I said "Exceptions"; and, frankly, I felt at that time—

Mr. Smith: We haven't researched that and we are not prepared to argue the point of the jury.

The Court: I have no objection.

Mr. Johannesen: I have no objection of holding my exceptions in abeyance to the question of the exception they

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want to argue today. If I have to bring my exceptions today, I want to bring them all today and try them with Mr. Porteous and Mrs. Wolbrette.

The Court: As I take it, you are not prepared to argue the exceptions on the Charity Hospital.

Mr. Johannesen: I have no objection.

The Court: The exceptions with respect to Charity Hospital are continued indefinitely. When you are ready for them to be urged, you raise them at that time. What other exceptions are to be argued?

Mr. Porteous: One is a preemptory and dilatory exception on the main issue, illegitimacy. The second exception is a preemptory exception to the effect that this mother's claim comes too late.

Mr. Smith: Those are the only two points we are prepared to argue.

(Argument by counsel.)

Mr. Levy: May we enter into a stipulation into the record?

Mrs. Wolbrette: I am not a party to this stipulation. I don't agree. I can't stipulate to these facts.

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Mr. Levy: This stipulation is by and between petitioner and Dr. Wing and his insurer. And this stipulation is solely for purposes of this exception, and it does not bind Dr. Wing nor his insurer upon trial of the matter.

Mr. Smith: This is with regard to any proof of damages or relationship at the trial on the merits. These are stipulations of facts between these parties for the purposes of these exceptions.

Mrs. Wolbrette: Can you stipulate that you are adding this as a paragraph of your petition, then it would have to be taken as proof for the purpose of the exception.

The Court: For the purpose of No Right or Cause of Action. What is the stipulation? What is the item?

Mr. Levy: The stipulation is to the effect, setting up the fact of the illegitimacy and the subsequent relationship between the mother and the children.

Mr. Porteous: Why don't you read your stipulation to the Judge so the Judge can get the meat of it?

Mr. Levy: Shall I?

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The Court: In your supplemental and amended petition, do you declare in it that they are illegitimate?

Mr. Levy: No. The question of illegitimacy was never raised as such in the petition, as I understand it.

Mr. Smith: The stipulation between counsel for Dr. Wing and his insurer and counsel for plaintiff is that Louise Levy was a Negro mother of five illegitimate children.

(Off-the-record discussion.)

C E R T I F I C A T E

I do hereby certify that the foregoing is a true and correct transcript as reported and transcribed by me.

A. CHARLES BORRELLO
Official Court Reporter.

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CLERK'S CERTIFICATE (omitted in printing)

Notice of Appeal**STATE OF LOUISIANA****CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS**

To: Dr. Willard J. Wing and Interstate Fire and Casualty Company, Through their attorney of record, Mr. William A. Porteous, III, Porteous and Johnson, 925 Hibernia Bank Bldg., New Orleans, La.

You ARE HEREBY NOTIFIED that on the 21st day of April 1966, Thelma Levy, etc., et al., plaintiff filed a petition for a devolutive appeal to the Court of Appeal, Fourth Circuit, State of Louisiana, in the above numbered and entitled cause.

The appeal is returnable to the said court of Appeal on the 13th day of June, 1966.

IN WITNESS WHEREOF, I hereunto affix my official signature and the seal of my office, this 22nd day of April, 1966.

**(Signature illegible)
Deputy Clerk Civil District Court**

Notice of Appeal**STATE OF LOUISIANA****CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS**

To: Charity Hospital of Louisiana, Through its attorney of record, Mr. Ingard O. Johannsen, National Bank of Commerce Bldg., New Orleans, La.

You ARE HEREBY NOTIFIED that on the 21st day of April, 1966, Thelma Levy, etc., et al., plaintiff filed a petition for a devolutive appeal to the Court of Appeal, Fourth Circuit, State of Louisiana, in the above numbered and entitled cause.

The appeal is returnable to the said court of Appeal on the 13th day of June, 1966.

IN WITNESS WHEREOF, I hereunto affix my official signature and the seal of my office, this 22nd day of April, 1966.

(Signature illegible)

Deputy Clerk Civil District Court

Notice of Appeal**STATE OF LOUISIANA****CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS**

To: State of Louisiana, Through its attorney of record,
Mrs. Dorothy Wolbrette, Assistant Attorney General,
State of Louisiana, State Capitol, Baton Rouge, La.

You ARE HEREBY NOTIFIED that on the 21st day of April, 1966, Thelma Levy, etc., et als., plaintiff filed a petition for a devolutive appeal to the Court of Appeal, Fourth Circuit, State of Louisiana, in the above numbered and entitled cause.

This appeal is returnable to the said court of Appeal on the 13th day of June, 1966.

IN WITNESS WHEREOF, I hereunto affix my official signature and the seal of my office, this 22nd day of April, 1966.

(Signature illegible)

Deputy Clerk Civil District Court

Folios 80-95 (omitted in printing)

Application for Rehearing

(Filed November 18, 1966)

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COURT OF APPEAL, FOURTH CIRCUIT**STATE OF LOUISIANA****No. 2355**

THELMA LEVY, in her capacity as administratrix of the
SUCCESSION OF LOUISE LEVY, and as the tutrix of and on
behalf of the minor children of Louise Levy, said
children being: RONALD BELL, REGINA LEVY, CECILIA
LEVY, LINDA LEVY and AUSTIN LEVY,

vs.

THE STATE OF LOUISIANA through the CHARITY HOSPITAL OF
LOUISIANA AT NEW ORLEANS, BOARD OF ADMINISTRATORS
and W. J. WING, M.D. and A.B.C. INSURANCE COMPANIES.

The petition of Thelma Levy, in her capacity as administratrix of the Succession of Louise Levy, and as the tutrix of and on behalf of the minor children of Louise Levy, said children being: Ronald Bell, Regina Levy, Cecilia Levy, Linda Levy and Austin Levy, plaintiff and appellant in the above entitled and numbered cause, respectfully represents, that the judgment of this honorable court rendered herein on the 7th day of November, 1966, affirming the judgment of the Civil District Court for the Parish of Orleans, which sustained defendants' exceptions and dismissed plaintiff's suit is erroneous and contrary to law and is prejudicial to the plaintiff for the following reasons:

I

The interpretation of Civil Code Article 2315 so as to prevent illegitimate children, and especially children under such circumstances as appear in this case from recovering for the wrongful death of their mother, is unconstitutional as violative of both due process and equal protection under both the Louisiana and United States Constitution.

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II

The denial of the right of recovery to illegitimate children for the wrongful death of a parent does not bear a substantial relation to the general health, morals or general welfare of the people.

III

There is discrimination in the denial of the right of illegitimate children to recover based on race, color or creed, as the interpretation results in unconstitutional discrimination as to both the Negro and as to the poor, all in violation of the Federal and Louisiana prohibitions against due process and equal protection.

IV

Under Louisiana law in this factual situation, these illegitimate children should be able to recover.

V

Petitioner files herewith in connection with this application for a new hearing a brief in support thereof and shows that for the reasons hereinabove stated and amplified in the said brief a rehearing should be granted herein.

WHEREFORE, petitioner prays that a rehearing be granted in this cause and that after due proceedings had the judgment rendered herein on the 7th day of November, 1966, be set aside and reversed and that there be judgment herein dismissing the defendants' exceptions and remanding this cause to the Civil District Court for further proceedings therein.

LEVY, SMITH & FORD

By: ADOLPH J. LEVY

1407 Pere Marquette Bldg.

New Orleans, Louisiana

524-6165

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CERTIFICATE OF SERVICE (omitted in printing)

Folios 29-1111 (omitted in printing)

**Opinion of the Court of Appeal for the Fourth Circuit,
State of Louisiana**

No. 2355

THELMA LEVY, in her capacity as administratrix of the Succession of Louise Levy, and as the tutrix of and on behalf of the minor children of Louise Levy, said children being: RONALD BELL, REGINA LEVY, CECELIA LEVY, LINDA LEVY and AUSTIN LEVY,

versus

THE STATE OF LOUISIANA through the CHARITY HOSPITAL OF LOUISIANA AT NEW ORLEANS BOARD OF ADMINISTRATORS and W. J. WING, M.D. and A. B. C. INSURANCE COMPANIES.

Appeal from the Civil District Court for the Parish of Orleans, State of Louisiana, No. 490-355,
Honorable Paul P. Garofalo, Judge

Louis H. Yarrut
Judge

(Court composed of Judges Louis H. Yarrut, L. Julian Samuel and Paul E. Chaser)

LEVY, SMITH & FORD
ADOLPH J. LEVY,
for Plaintiff-Appellant

[Stamp—Nov. 7, 1966]

PORTEOUS & JOHNSON

WILLIAM A. PORTEOUS, III

for W. J. Wing, M.D. and Interstate Fire and Casualty Company, Defendants and Appellees

MRS. DOROTHY WOLBRETTE, Assistant Attorney General
for State of Louisiana, Defendant-Appellee

INGARD O. JOHANNESEN, Affirmed
for Charity Hospital, Defendant-Appellee

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This is an appeal from a judgment maintaining exceptions of no right or cause of action to a suit filed on behalf of minor children for the wrongful death of their mother.

The children are admittedly illegitimate and have never been legitimated.

Plaintiff-Appellant, on behalf of the children, contends that the denial of this right to illegitimate children solely because of their status is, as to them, a denial of due process and equal protection under law under both the Louisiana and United States Constitutions (La. Const., Article 1, Section 2; U. S. Const. 5th and 14th Amendments), and because it bears no real or substantial relation to the general health, morals, or welfare of the people, citing *Reynolds v. Louisiana Board of Alcoholic Beverage Control*, 249 La. 127, 165 So. 2d 794.

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The case of *Reynolds v. Louisiana Board of Alcoholic Beverage Control*, cited *supra*, was based on the fact that the statute bore no substantial relation to the general health, morals, or general welfare of the people. Denying illegitimate children the right to recover in such a case is actually based on morals and general welfare because it discourages bringing children into the world out of wedlock.

The action for wrongful death is purely statutory in Louisiana, being found in Article 2315 of the Revised Civil Code of Louisiana.

Our jurisprudence is well established that "child" means legitimate child, and that recovery is denied both to illegitimate and putative children for the ~~wrongful~~ death of a parent. *Board of Com'r's v. City of New Orleans*, 223 La. 199, 65 So. 2d 313; *Sesostris Youchican v. Texas & P. Ry. Co.*, 147 La. 1080, 86 So. 551; *Jackson v. Lindlom*, 84 So. 2d 101; see also *Chivers v. Couch Motor Lines, Inc.*, 159 So. 2d 544; *Scott v. La Fontaine*, 148 So. 2d 780; *Buie v. Hester*, 147 So. 2d 733; 14 Tul. L. Rev. 613.

That an illegitimate child was dependent upon the deceased parent for support makes no difference. *Board of Com'r's v. City of New Orleans*, *supra*.

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Mere acknowledgment will not serve to cure a defect in legitimacy. *Lynch v. Knoop*, 118 La. 611, 43 So. 252; *Scott v. La Fontaine*, *supra*.

Since there is no discrimination in the denial of the right of illegitimate children to recover based on race, color, or creed; we can find no basis for the contention of unconstitutionality, and can find no jurisdiction of our courts to such effect. The judgment appealed from is affirmed; Appellant to pay all costs of this appeal.

Judgment Affirmed.

Rehearing Refused Dec 5 1966

Writ Refused Jan 20 1967

Order Denying Writ**SUPREME COURT OF LOUISIANA****NEW ORLEANS, 70112****No. 48,518****January 20, 1967**

**THELMA LEVY, in her capacity as administratrix of the
succession of Louise Levy, etc.**

v.

**THE STATE OF LOUISIANA through the CHARITY HOSPITAL OF
LOUISIANA AT NEW ORLEANS, BOARD OF ADMINISTRATORS, ET AL.**

**In re: Thelma Levy, etc., applying for certiorari, or writ
of review, to the Court of Appeal, Fourth Circuit, Parish
of Orleans**

**Writ refused. No error of law in the judgment of the Court
of Appeal**

A TRUE COPY**/s/ FWH****Clerk's Office****/s/ JBF****Supreme Court of Louisiana****/s/ JBH****New Orleans****/s/ EHMcC****January 20, 1967****/s/ WBH****(Signature illegible)****/s/ JWS****Deputy Clerk****/s/ FWS**

**Notice of Appeal to the Supreme Court
of the United States**

(Filed April 19, 1967)

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

DIVISION "G"

DOCKET 4

No. 4130-566

THELMA LEVY, in her capacity as administratrix of the Succession of Louise Levy, and as the tutrix of and on behalf of the minor children of Louise Levy, said children being: RONALD BELL, REGINA LEVY, CECILIA LEVY, LINDA LEVY and AUSTIN LEVY,

Appellant,

versus

THE STATE OF LOUISIANA, through the CHARITY OF HOSPITAL OF LOUISIANA AT NEW ORLEANS BOARD OF ADMINISTRATORS and W. J. WING, M.D. and A.B.C. INSURANCE COMPANIES,

Appellees.

Filed: April 19, 1967

(Signature illegible)

Deputy Clerk

I. Notice is hereby given that Thelma Levy, in her capacity as administratrix of the Succession of Louise Levy, and as the tutrix of and on behalf of the minor children of Louise Levy, said children being: Ronald Bell, Regina

Levy, Cecilia Levy, Linda Levy and Austin Levy, the appellant above named hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Louisiana, denying the petition for writs of certiorari, or writ of review, to the Court of Appeal, Fourth Circuit, and from the decision of the Court of Appeal, Fourth Circuit, affirming the dismissal entered in this action, the decision of the Louisiana Supreme Court being rendered on January 20, 1967. This appeal is taken pursuant to 28 U. S. C. Section 1257(2).

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

The entire record in this case, however, said record *not* to include memoranda filed herein.

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III. The following questions are presented by this appeal:

1. Whether the denial of a right or cause of action to illegitimate children for the wrongful death of their mother, when the denial is based solely upon their illegitimate status, is, as to them, a denial of due process and equal protection under the United States Constitution, especially when the record discloses that their mother treated them as any good mother would treat her own legitimate children.

2. Whether the requirement of legitimacy for a recovery for the wrongful death of a parent results in a denial of due process and equal protection within the meaning of the United States Constitution because it is discriminatory against the poor and against the Negro.

3. Whether the denial of a right or cause of action to illegitimate children for the wrongful death of their mother

bears no real or substantial relation to general health, morals, or welfare of the people and is therefore violative of the Fourteenth Amendment to the United States Constitution.

ADOLPH J. LEVY

Attorney for Appellant

Levy, Smith & Paillet

1407 Pere Marquette Building

New Orleans, La. 70112

524-6165

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CERTIFICATE OF SERVICE (omitted in printing)

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**Letter from Petitioner's Attorneys to the Clerk,
Fourth Circuit Court of Appeal**

(Letterhead of Levy, Smith & Paillet,
New Orleans, Louisiana 70112)

April 20, 1967

430-566

Clerk
Fourth Circuit Court of Appeal
Civil District Court Building
New Orleans, Louisiana

Re: Thelma Levy, etc. vs.
Charity Hospital, et al.
No. 2355

Dear Sir:

I would appreciate your filing the enclosed Notice of Appeal to the Supreme Court of the United States. I have filed a similar Notice with the Clerk of the Civil District Court for the Parish of Orleans. I am filing this additional Notice with you out of an abundance of caution, as it is not clear whether this Notice should be filed in this Court or in the Civil District Court. Rule 10 (3) of the United States Supreme Court provides that "The Notice of Appeal shall be filed with the Clerk of the Court possessed of the record". Because this Court and the Civil District Court are possessed of a record, I am filing my Notice in both Courts:

I would appreciate your conferring with the Clerk of the Civil District Court about this matter.

Very truly yours,

ADOLPH J. LEVY

AJD:SW

ccs: MRS. DOROTHY D. WOLBRETTE

Assistant Attorney General

State of Louisiana

State Capitol

Baton Rouge, Louisiana

MR. INGARD O. JOHANNESEN

National Bank of Commerce Bldg.

New Orleans, La.

Clerk,

Civil District Court

MR. WILLIAM A. PORTEOUS, III

Porteous & Johnson

925 Hibernia Bank Bldg.

New Orleans, La.

**Notice of Appeal to the Supreme Court
of the United States**

(Filed April 20, 1967)

COURT OF APPEAL

FOURTH CIRCUIT

STATE OF LOUISIANA

No. 2355

THELMA LEVY, in her capacity as administratrix of the Succession of Louise Levy, and as the tutrix of and on behalf of the minor children being: **RONALD BELL, REGINA LEVY, CECELIA LEVY, LINDA LEVY and AUSTIN LEVY**,

versus

THE STATE OF LOUISIANA through the CHARITY HOSPITAL OF LOUISIANA AT NEW ORLEANS BOARD OF ADMINISTRATORS and W. J. WING, M.D. and A.B.C. INSURANCE COMPANIES.

I. Notice is hereby given that Thelma Levy, in her capacity as administratrix of the Succession of Louise Levy, and as the tutrix of and on behalf of the minor children of Louise Levy, said children being: Ronald Bell, Regina Levy, Cecelia Levy, Linda Levy and Austin Levy, the appellant above named hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Louisiana, denying the peti-

tion for writs of certiorari, or writ of review, to the Court of Appeal, Fourth Circuit, and from the decision of the Court of Appeal, Fourth Circuit, affirming the dismissal entered in this action, the decision of the Louisiana Supreme Court being rendered on January 20, 1967. This appeal is taken pursuant to 28 U. S. C. Section 1257(2).

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

The entire record in this case, however, said record *not* to include memoranda filed herein.

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III. The following questions are presented by this appeal:

1. Whether the denial of a right or cause of action to illegitimate children for the wrongful death of their mother, when the denial is based solely upon their illegitimate status, is, as to them, a denial of due process and equal protection under the United States Constitution, especially when the record discloses that their mother treated them as any good mother would treat her own legitimate children.

2. Whether the requirement of legitimacy for a recovery for the wrongful death of a parent results in a denial of due process and equal protection within the meaning of the United States Constitution because it is discriminatory against the poor and against the Negro.

3. Whether the denial of a right or cause of action to illegitimate children for the wrongful death of their mother bears no real or substantial relation to general health, morals, or welfare of the people and is therefore violative

of the Fourteenth Amendment to the United States Constitution.

ADOLPH J. LEVY

Attorney for Appellant

Levy, Smith & Pailet

1407 Pere Marquette Building

New Orleans, Louisiana 70112

524-6165

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CERTIFICATE OF SERVICE (omitted in printing)

Motion for Extension of Time**(Filed June 6, 1967)****COURT OF APPEAL****FOURTH CIRCUIT****STATE OF LOUISIANA****No. 2355**

On motion of Thelma Levy, appearing herein through her undersigned counsel and on suggesting to the Court that the time within which her appeal must be docketed in the United States Supreme Court is on or about June 19, 1967; and on further suggesting to the Court that an additional sixty (60) days is required by counsel in order to prepare all necessary papers, comply with all rules of the United States Supreme Court and to do further research for this cause; and on further suggesting to the Court that the additional time will suffice within which these requirements may be met.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Mover be granted an additional sixty (60) days within which she may file her Jurisdictional Statement in the United States Supreme Court.

New Orleans, Louisiana, this 6 day of June, 1967.

R. T. McBRIDE

Judge

LEVY, SMITH & PALET

BY: ADOLPH J. LEVY

Attorney for Thelma Levy

1407 Pere Marquette Building

New Orleans, Louisiana 70112

524-6165

CERTIFICATE OF SERVICE (omitted in printing)

